

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of)	CC Docket No. 94-11
TELEPHONE AND DATA SYSTEMS, INC.)	
For Facilities in the Domestic)	File No. 10209-CL-P-715-B-88
Public Cellular Telecommunications)	
Radio Service on Frequency Block)	
B, in Market 715, Wisconsin 8)	
(Vernon), Rural Service Area)	

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To: Honorable Joseph P. Gonzalez

APR - 5 1994

REPLY TO OPPOSITION
TO PETITION TO INTERVENE

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

GTE Mobilnet Incorporated ("GTE"), by its attorneys and pursuant to § 1.45 of the Commission's rules,¹ hereby replies to the Opposition of Telephone and Data Systems, Inc. ("TDS"), to GTE's Petition to Intervene.

I. GTE Has Standing to Intervene as a Matter of Right in this Proceeding

Section 1.223(a) provides that

Where, in cases involving applications for construction permits and station licenses, or modifications or renewals thereof, the Commission has failed to notify and name as a party to the hearing any person who qualifies as a party in interest, such person may acquire the status of a party by filing . . . a petition for intervention . . . if the person's status as a party in interest is established, the petition to intervene will be granted.

47 C.F.R. § 1.223(a). Under Section 1.223(a), a party in interest

¹ Section 1.45 of the rules is applicable in this instance because Section 1.294 appears, by its terms, only to apply to "parties to a hearing." Because the Presiding Judge has not yet granted GTE's petition to intervene, GTE is not yet a party, and therefore the more general rule on pleadings applies.

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may intervene as a matter of right. Algreg Cellular Engineering et al., 6 FCC Rcd 5299, 5300, 69 R.R.2d 1346, 1347 (1991).

In Telephone and Data Systems, Inc., FCC 94-29 (released Feb. 1, 1994), the Commission set aside its grant to TDS of the Wisconsin 8 Rural Service Area ("Wisconsin 8") and designated TDS's application for hearing. GTE had also filed an application for Wisconsin 8. Because the grant to TDS is still under consideration, GTE's application for Wisconsin 8 is still pending. Thus, GTE is a mutually exclusive applicant with TDS, and GTE's ability to maintain its application for Wisconsin 8 is directly affected by the outcome of the instant proceeding. See Algreg Cellular Engineering, et al., 6 FCC Rcd 5299, 5300, 69 R.R.2d 1346, 1347-48 (1991); Virginia Communications, Inc., 2 FCC Rcd 1895 (1989).

The Common Carrier Bureau also supports GTE's right to intervene in this case. GTE's interest in this hearing is clear, and therefore, GTE has an absolute right of intervention.

II. TDS's Grounds for Objecting to GTE's Standing are not Properly before this Forum

TDS opposes GTE's intervention on the grounds that GTE's application for Wisconsin 8 is ineligible due to the simultaneous application for the same service area of Contel of Illinois, Inc. ("Contel"), a company now under common ownership with GTE. At the time the applications were originally filed, however, GTE and Contel were not under common ownership.

This issue is not currently before the Presiding Judge. This proceeding is solely concerned with the validity of the Commission's grant of Wisconsin 8 to TDS. Neither GTE's nor

Contel's applications for Wisconsin 8 have been designated for a hearing by the Common Carrier Bureau, and neither application is presently within the jurisdiction of the Presiding Judge.

Moreover, it bears noting that the basis for TDS's objection is contradictory with its own stance in this proceeding. TDS claims that GTE's intervention should not be permitted because an affiliate of GTE has an interest in one of the parties to the settlement group in the same market. Ironically, this is TDS's posture in this proceeding, a position that the full Commission expressly supported in its hearing designation order. See Telephone and Data Systems, Inc., FCC 94-29, ¶ 12 (Feb. 1, 1994). Should TDS seek reconsideration of the Commission's order on this point, it is free to do so.

Any issue of cross-ownership among the other applicants for Wisconsin 8 is properly a matter for the Common Carrier Bureau, which makes initial determinations concerning such issues. The Bureau has not yet had occasion to consider the matter, because the point will only arise if TDS is disqualified and GTE ultimately wins the lottery. Therefore, it would be premature for the matter to be addressed at this proceeding, and it would be beyond the Presiding Judge's authority to make the determination that TDS requests.

III. The Requirements of Section 1.223(b) are Irrelevant to GTE's Standing


TDS maintains that GTE has not, as a prerequisite for standing, demonstrated how its participation will assist the Commission's determinations of the issues in question under Section 1.223(b). On this point, TDS is simply mistaken.

GTE's petition to intervene is founded on Section 1.223(a) of the Rules. Section 1.223(a) requires only that the party seeking to intervene show its interest in the hearing. Because the interest of a mutually exclusive applicant in a proceeding is so manifest, Johnston Broadcasting Co. v. FCC, 175 F.2d 351 (D.C. Cir. 1949), a further showing of GTE's ability to assist the Commission's determinations is not required under Section 1.223(a).


CONCLUSION

Because GTE has an interest in this proceeding, its intervention under Section 1.223(a) of the Rules is a matter of right. TDS's objections to GTE's intervention are unfounded. Thus, GTE's petition to intervene should be granted.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I, Jean Wright, do hereby certify that a true and correct copy of the foregoing document was served by First Class United States mail, postage-prepaid, on this 5th day of April, 1994 upon:

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